

1 Ian Ledlin
2 Phillabaum, Ledlin, Matthews
3 & Sheldon, PLLC
4 421 W. Riverside Avenue, #900
5 Spokane, WA 99201
6 (509) 838-6055
7 Lawyer for Numerica Credit Union

Hon. Frank L. Kurtz

8 UNITED STATES BANKRUPTCY COURT
9 EASTERN DISTRICT OF WASHINGTON

10 In re:

No. 06-02852-FLK7

11 CHARLES A. & VANESSA L.
12 XAUDARO,

Debtors.

13 NUMERICA CREDIT UNION,

14 Plaintiff,

15 vs.

16 CHARLES A. & VANESSA L.
17 XAUDARO,

18 Defendants.

Adv. No. 07-80001

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

19 THIS MATTER having come before the Court on plaintiff's Motion for Entry
20 of Default and the Entry of Default thereon, and by the Motion for Judgment by
21 Default, the Court having considered the files and pleadings herein and the
22 Declaration in Support, makes the following findings of fact:

23 1. On or about March 10, 2006, Defendants opened a VISA credit card
24 account with NCU ("VISA Account"), with a credit limit of \$10,000.00.
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FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 1

PHILLABAUM, LEDLIN, MATTHEWS
& SHELDON, PLLC
ATTORNEYS AT LAW
421 WEST RIVERSIDE, SUITE 900
SPOKANE, WASHINGTON 99201-0413
TELEPHONE (509) 838-6055

1 2. Defendants represented to NCU that they had a gross monthly income
2 of \$3,460.00 per month.

3 3. In fact, Defendant Charles Xaudaro had not worked for a full week at
4 any time in 2006.

5 4. On or about March 10, 2006, Defendants used the VISA Account to
6 make a payment to Hapo Credit Union in the amount of \$2,700.00.

7 5. On or about March 10, 2006, Defendants used the VISA Account to
8 make a payment to U.S. Bank in the amount of \$2,960.00.

9 6. Due to a disability, Defendant Charles Xaudaro became unemployed in
10 approximately April of 2006.

11 7. On or about April 4, 2006, Defendants made a payment on the VISA
12 Account by share transfer in the amount of \$2,000.00.

13 8. On or about April 7, 2006, Defendants made three cash advances totaling
14 \$4,833.25.

15 9. On or about April 24, 2006, Defendants made a cash advance of
16 \$500.00.

17 10. On or about May 15, 2006, Defendants made a payment on the VISA
18 Account in the amount of \$1,900.00 by check #11381 charged to their Capital One
19 account.

20 11. On or about May 16, 2006, Defendants made an ATM advance on the
21 VISA Account in the amount of 501.50.

22 12. On or about May 17, 2006, Defendants made an ATM advance on the
23 VISA Account in the amount of \$501.50.

24 13. On or about May 19, 2006, Defendants made a payment on the VISA
25 Account in the amount of \$2,500.00 by check #11383 charged to their Capital One
26 account.

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FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 2

PHILLABAUM, LEDLIN, MATTHEWS
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1 14. On or about May 223, 2006, Defendants made a payment on the VISA
2 Account in the amount of \$9,000.00 by check #11384 charged to their Capital One
3 account.

4 15. On or about May 22, 2006, Defendants made seven money orders
5 payable to Defendant Vanessa Xaudaro totaling \$7,000.00. Money order fees total
6 \$7.00.

7 16. On or about May 22, 2006, Defendants made ATM and other advances
8 on the VISA Account totaling \$2,669.48.

9 17. On or about May 23, 2006, Defendants made an ATM advance on the
10 VISA Account in the amount of \$501.50.

11 18. Defendants made other charges to their Visa Account in addition to those
12 stated in the foregoing paragraphs.

13 19. On or about May 26, 2006, the Capital One check #11381 in the amount
14 of \$1,900.00 was dishonored.

15 20. On or about June 2, 2006, the Capital One check #11383 in the amount
16 of \$2,500.00 was dishonored.

17 21. On or about June 5, 2006, the Capital One check #11384 in the amount
18 of \$9,000.00 was dishonored.

19 22. Defendants made charges against the Visa Account because they were
20 unemployed, needed cash, and had no money whatsoever.

21 23. When they deposited the Capital One checks, Defendants intended that
22 NCU believe that Defendants had credit against which they could make additional
23 charges.

24 24. At the time they made the deposits, Defendants knew that the Capital
25 One checks would be dishonored; alternatively, Defendants recklessly disregarded
26 whether the Capital One checks would be honored.

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FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 3

PHILLABAUM, LEDLIN, MATTHEWS
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SPOKANE, WASHINGTON 99201-0413
TELEPHONE (509) 838-6055

1 25. Defendants intended to deceive NCU into believing that the amount of
2 available credit was greater than the true available balance of their Visa Account.

3 26. Defendants intended to induce NCU to rely upon the worthless Capital
4 One checks that they paid to NCU.

5 27. In reliance upon the Defendants' implied representations that the Capital
6 One checks were good, NCU permitted Defendants to continue to make charges
7 against the Visa Account.

8 28. NCU sustained damages as the proximate result of the Defendants'
9 implied representations that the Capital One checks would be honored.

10 29. On June 5, 2006, the balance due on the Visa Account was \$22,411.57.

11 30. On January 19, 2007, the debtors filed this bankruptcy case.

12 31. Defendants' Bankruptcy Schedules disclose indebtedness totaling more
13 than \$181,000.00, none of which debt is secured by real property.

14 Based upon the foregoing findings of fact, the Court enters the following
15 conclusions of law:

16 1. The court has jurisdiction over the parties and the subject matter of this
17 action.

18 2. Plaintiff is entitled to recover its costs and reasonable attorney fees
19 incurred herein.

20 3. Plaintiff is entitled to judgment against defendants in the amount of
21 \$26,230.36, consisting of principal of \$22,460.43, interest thereon pursuant to 11
22 USC § 1961 through February 27, 2007 of \$2,116.68, and attorney fees and costs of
23 \$1,653.25.

24 4. Defendants' debt to NCU should be excepted from discharge pursuant
25 to 11 USC § 523(a)(2).
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FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 4

PHILLABAUM, LEDLIN, MATTHEWS
& SHELDON, PLLC
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TELEPHONE (509) 838-6055

1 5. Plaintiff's judgment should accrue interest pursuant to 11 USC § 1961,
2 5.05% per annum, from date of entry.

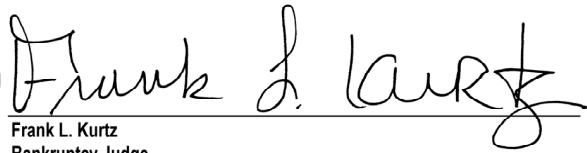
3 Presented by:

4 PHILLABAUM, LEDLIN, MATTHEWS
5 & SHELDON, PLLC

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8 _____
9 IAN LEDLIN
10 Lawyer for Plaintiff

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25 
26 _____
27 Frank L. Kurtz
28 Bankruptcy Judge

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FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 5

PHILLABAUM, LEDLIN, MATTHEWS
& SHELDON, PLLC
ATTORNEYS AT LAW
421 WEST RIVERSIDE, SUITE 900
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